

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 818 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMLAL SHIRUMAL

Versus

SAKERBEN K. DIED BY HER HEIRS JENTILALORJAYANTILAL TULSIDAS

Appearance:

MR DU SHAH for Petitioner

MR PM THAKKAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2000

ORAL JUDGEMENT

1. This Civil Revision Application is filed by the original plaintiff-tenant under Section 29(2) of the Bombay Rents (Hotel & Lodging House Rates Control) Act, 1947 ('Act' for short), challenging the judgment and decree dated February 10, 1984, passed by learned District Judge, Rajkot, in Civil Appeal No.144 of 1981,

whereby learned District Judge confirmed the judgment and decree dated June 30, 1981, passed by learned Judge, Small Causes Court, Rajkot, in Regular Civil Suit No.133 of 1980.

2. Opponent-landlady owns a property situated at Raghuvirpara, Street No.3, and the petitioner had taken on lease three rooms as godown which were on the first floor of the property at monthly rent of Rs.50/-. There was a 'raves' i.e. balcony in front of two of these godowns and that balcony was also in possession of the petitioner. To the southern side of the godowns, there was a lobby and one can come to the raves i.e balcony by opening the door of the godowns towards the south and the passage leading to the godown was in the lobby and there was no other passage. The opponent's eldest son resides on the second floor of the said suit property and the opponent herself was residing adjoining to the suit premises. As per the pleadings, water of the premises possessed by the opponent-defendant fell on the road through the pipe and that pipe came from the second floor and passed through the premises in possession of the petitioner. For clearing dust in the pipe which passed through the balcony, the opponent used to take keys of the plaintiff's godowns and, opening lock of the lobby, she used to enter into it for cleaning the pipe and, after cleaning pipe, she used to return keys to the plaintiff. As per the case of the petitioner, on February 29, 1980, the opponent approached the petitioner and requested him to give keys stating that water had collected in the pipe and the pipe required to be cleaned and she promised to return keys on cleaning the pipe. According to the petitioner, relying on the said statement of the opponent, he had parted with keys with the belief that she would return the keys as she did in the past. It is averred by the petitioner that, after cleaning the pipe, the opponent did not return keys and, therefore, he demanded keys on March 23, 1980 and, at that time, she promised to give keys within 2-3 days. In the meantime, the petitioner received notice on March 25, 1980 to the effect that the petitioner had already handed over possession of three godowns on February 29, 1980 and the petitioner was asked to take away his goods and boxes which were lying in the godown. It is averred by the petitioner that the opponent had taken illegally possession of the godowns, which were in possession of the petitioner as tenant, and she had illegally applied her lock. Therefore, the petitioner filed Rent Civil Suit No.133 of 1980 in the Small Causes Court, Rajkot, for taking back possession of the three godowns.

3. The suit was resisted by the opponent by filing her written statement at Exh.16, inter alia, contending that before February 29, 1980, she used to take keys from the petitioner to clean the pipe, but it was false to say that on February 29, 1980, she had taken keys to clean the pipe from the petitioner. It was denied that on March 23, 1980, she had promised to give back the keys within 2-3 days. She reiterated that on February 29, 1980, the petitioner had handed over vacant possession of the demised godowns and had obtained receipt to that effect. As some sundry articles such as empty boxes and baskets and two small machines were kept in the chawk by the petitioner and he was supposed to take the same at his convenience but, however, since he did not take those articles, he was served with a notice on March 25, 1980 requesting him to remove the said articles from the said godown. The opponent further alleged that, on receipt of the notice, the petitioner got enraged and filed false suit against her. The opponent prayed that, since the petitioner had already handed over possession of the suit property, the suit be dismissed with costs.

4. On the basis of rival assertions made by the parties, learned trial judge framed issues at Exh.17. In support of the case, the petitioner examined himself at Exh.21, and one Kanjibhai Chakubhai at Exh.36. The petitioner also examined Dr. Bhagirathiben Jadavji at Exh.37. On behalf of the opponent, the opponent herself examined at Exh.40, and Pareshkumar Chandulal, son of the opponent, was examined at Exh.41. Learned trial judge, on appreciation of oral as well as documentary evidence, concluded that the petitioner had failed to prove that the defendant had by making false representation illegally taken possession of the suit godowns. Learned trial judge further concluded that the opponent had proved that, on February 29, 1980, the petitioner had handed over vacant and peaceful possession of the suit godowns to the landlady. On the basis of the abovereferred to conclusions, the trial court dismissed the suit of the petitioner by judgment and decree dated June 30, 1981. The said judgment and decree was challenged by the petitioner in the District Court, Rajkot, in Civil Appeal No.144 of 1981. Learned District Judge, Rajkot, after going through the evidence adduced in the trial court and after hearing learned advocates for the parties, confirmed the judgment and decree passed by the trial court, and dismissed appeal filed by the petitioner with costs, which has given rise to filing of present Civil Revision Application by the petitioner.

5. Learned counsel for the petitioner has taken me through the entire record and proceedings of the courts below, and has vehemently submitted that the courts below have erred in not properly appreciating the evidence produced by the plaintiff i.e. the petitioner. Learned counsel for the petitioner submitted that no tenant would hand over possession of three godowns which were used for ripening of mangoes and storing various kinds of fruits. That, the opponent-landlady had, by making false representation, had taken away keys from the petitioner and had wrongly retained the keys and, thereafter, had applied her lock by taking possession of three godown illegally and, therefore, the appeal be allowed and possession of godowns be restored to the petitioner.

6. Learned counsel for the respondent has supported the judgments of the courts below.

7. In my view, none of the contentions raised by learned counsel for the petitioner deserves any merit. The courts below had properly appreciated the oral evidence adduced by the parties. Both the courts below recorded concurrent findings based on appreciation of oral as well as documentary evidence which shows that the petitioner had handed over possession of the suit godowns on February 29, 1980. Even if the case of the petitioner is believed that the opponent had taken keys on February 29, 1980, then he would not have sat silent till April 1, 1980, the date on which the suit was filed. These being concurrent findings of fact recorded by both the courts below, I do not find any merit in this Civil Revision Application to interfere with the same. The Supreme Court, in the case of Patel Valmik Himatlal vs. Patel Mohanlal Muljibhai, (1998) 7 Supreme Court Cases 383, has laid down that powers of the High Court under Section 29(2) of the Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision, but it does not vest the High Court with the power to rehear the matter and reappraise the evidence. The mere fact that a different view is possible on reappraisal of the evidence cannot be a ground for exercise of the revisional jurisdiction. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Since both the courts below had recorded concurrent findings of fact, in view of the principles laid down by the Supreme Court in Patel Valmik Himatlal's case (supra), it will not be open to this Court to reopen the case and record a contrary finding.

8. As a result of foregoing discussion, this Civil Revision Application fails and is hereby dismissed. Interim relief is vacated. Rule is discharged with no order as to costs.

(swamy)